

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL 15L-36

DATE RECEIVED: September 29, 2015

DATE OF NOTIFICATION: October 5, 2015

DATE ACTIVATED: November 20, 2015

EARLIEST SOL: October 23, 2019

LATEST SOL: October 23, 2019

ELECTION CYCLE: 2014

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FEDERAL ELECTION
COMMISSION

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SOURCE:

Internally Generated

RESPONDENTS:

Democratic Executive Committee of Florida and
Judy Mount in her official capacity as treasurer

RELEVANT STATUTES:

52 U.S.C. § 30104¹

52 U.S.C. § 30104(e)(2)

11 C.F.R. § 104.1(a)

11 C.F.R. § 104.3(a)

11 C.F.R. § 111.43

11 C.F.R. § 300.36(b)(2)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred the Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer, (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose the receipt of Levin Funds totaling \$232,457.33 on its 2014 12-Day Pre-General Report.² For the reasons discussed below, we recommend that the Commission open a MUR, find reason to believe that the Committee

¹ On September 2, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

² See RAD Referral, Sept. 29, 2015, incorporated herein by reference.

violated 52 U.S.C. § 30104(e)(2), and authorize pre-probable cause conciliation with the Committee.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Committee is a state party committee of the Democratic Party.³ On October 23, 2014, the Committee filed the original 12-Day Pre-General Report, which disclosed no receipts on Line 18(b) (Transfers from Levin Funds, from Schedule H5) of the Detailed Summary Page.⁴

On January 21, 2015, the Committee filed an Amended 2014 12-Day Pre-General Report, disclosing \$232,457.33 in receipts on Line 18(b) that were not disclosed in the original filing.⁵

On March 22, 2015, RAD sent a Request For Additional Information ("RFAI") to the Committee requesting clarification regarding the disclosure of additional Levin fund receipts totaling \$232,457.33.⁶ On April 27, 2015, the Committee filed a second Amended 2014 12-Day Pre-General Report, which disclosed no change in receipts from the previous amendment and included a memo text in response to the RFAI.⁷ The memo text stated:

The committee inadvertently omitted transfers made on Line H5 and 4c due to confusion by the committee of the proper use of Levin funds. The committee discovered these errors during the preparation of the year-end report and filed an amendment. The

³ See Amended Statement of Organization filed on February 20, 2015, available at <http://docquery.fec.gov/pdf/142/14960034142/14960034142.pdf>.

⁴ The original 12-Day Pre-General Report included a Schedule L (FEC Form 3X) (Aggregation Page: Levin Funds) and Schedule L-A (Itemized Receipts of Levin Funds), disclosing \$235,000 in itemized Levin receipts, but did not include a Schedule H5 (Transfers of Levin Funds Received for Allocated Federal Election Activity).

⁵ The Amended Report included Schedule H5 (Transfers of Levin Funds Received for Allocated Federal Election Activity and Schedule L-B (Itemized Disbursements of Levin Funds) that were omitted from the Committee's original 12 Day Pre-General Report.

⁶ See RR 15L-36 at 1-2.

⁷ *Id.* at 2.

1 amendment being filed today includes an additional transfer on
2 Schedule L, Line 4c from the Levin account which was
3 inadvertently omitted from the latest amendment.⁸
4

5 On June 2, 2015, the Committee filed two Amended 2014 12-Day Pre-General Reports,
6 but the reports disclosed no change in receipts from the previous amendment and no change in
7 the memo text included with the previous amended report.⁹ On July 7, 2015, RAD contacted the
8 Committee's Finance Director to inform her that the increase in receipts disclosed could be
9 referred for further action by the Commission and the Committee could file a Miscellaneous
10 Electronic Submission if there was further information to disclose about the increased activity.¹⁰
11 The Committee has not submitted anything more to date.¹¹

12 RAD referred the Committee to OGC for disclosing a total of \$232,457.33 in additional
13 receipts on its Amended 2014 12-Day Pre-General Report, a 21% increase in the overall receipts
14 reported in the original 2014 12-Day Pre-General Report.¹² The amount of the increased activity
15 meets the threshold for referral to OGC under RAD's 2013-2014 Review and Referral

⁸ The Committee's January 21, 2015, amended report disclosed \$167,065.14 on Line 4(c) (Transfers to Federal or Allocation Account, GOTV) on Schedule L (Aggregation Page: Levin Funds). That amount was corrected to \$232,457.33 on Schedule L of the April 27, 2015, amended report. *Id.* On May 13, 2015, RAD sent the Committee an RFAI to correct a page reference in the March 22, 2015, RFAI, that stated that the increased receipts were disclosed on the Schedule L Aggregation page rather than on the Detailed Summary Page. *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Cover Memo to Referral. According to RAD, the reference in the RFAI regarding the disclosure of additional Levin disbursements totaling \$232,457.33 in the Amended 2014 12 Day Pre-General Report was not included in the referral because the increase in Levin disbursements corresponds with the increase in receipts referenced in the referral. *Id.*

1 Procedures for Unauthorized Committees.¹³ Upon receipt of the Referral, OGC notified the
2 Committee and provided it with an opportunity to respond.¹⁴

3 In Response, the Committee acknowledges the reporting error but asserts that it was
4 caused by confusion regarding the proper disclosure of Levin funds.¹⁵ Specifically, the
5 Committee asserts that its Levin fund activities during the 2014 election cycle were the first
6 since 2010 and the staff member responsible for the disclosure reports "did not have experience
7 in the disclosure of Levin activity"¹⁶ Finally, the Committee states that the error was
8 discovered after the election when it consulted with counsel on the proper handling of Levin
9 activities and that it promptly filed amended reports to correct the error.¹⁷ The Committee
10 requests dismissal or referral to the Alternative Dispute Resolution Office ("ADRO").¹⁸

11 **B. Legal Analysis**

12 The Act requires committee treasurers to file reports of receipts and disbursements in
13 accordance with the provisions of 52 U.S.C. § 30104. If a state, district, or local party
14 committee's combined annual receipts and disbursements for federal election activity ("FEA")
15 are \$5,000 or more during the calendar year, then it must disclose receipts and disbursements of
16 federal funds and Levin funds used for FEA.¹⁹

¹³ *Id.*

¹⁴ See Notification Letter to Judy Mount, Treasurer, Democratic Executive Committee of Florida (Oct. 5, 2015); see also Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

¹⁵ Resp. at 1 (Nov. 17, 2015).

¹⁶ *Id.*

¹⁷ *Id.* at 1-2.

¹⁸ *Id.* at 1.

¹⁹ See 52 U.S.C. § 30104(e)(2)(A); 11 C.F.R. § 300.36(b)(2).

1 Here, the Committee did not comply with the Act's reporting requirements when it failed
2 to disclose \$232,457.33 in Levin fund receipts used for FEA on the original 2014 12-Day
3 Pre-General Report. The Committee states that lack of experience in handling Levin activities
4 caused the error — both staff inexperience and the four-year gap since it last engaged in such
5 activities.²⁰ Regardless, the Committee acknowledges its reporting error.²¹ And although the
6 Committee requests that the matter be dismissed or referred to the ADRO, this matter is
7 appropriately referred to OGC under Standard 7 of RAD's Review and Referral Procedures.²²

8 Accordingly, we recommend that the Commission open a MUR and find reason to
9 believe that the Committee violated 52 U.S.C. § 30104(e)(2).

²⁰ The Committee appears to have properly disclosed its Levin activity in 2010.

²¹ Resp. at 2.

²² See 2013-2014 RAD Review and Referral Procedures for Unauthorized Committees at 74. The Commission has previously pursued an increased activity matter involving the failure to disclose Levin funds. See RR 13L-54/ADR 675 (Democratic Party of Illinois) (referral for the failure to disclose \$182,175 in Levin receipts, resulting in a settlement with a \$4,500 civil penalty).

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IV. RECOMMENDATIONS


1. Open a MUR.
2. Find reason to believe that Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer violated 52 U.S.C. § 30104(e)(2).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Democratic Executive Committee of Florida and Judy Mount in her official capacity as treasurer prior to a finding of probable cause to believe.
5. Approve the attached conciliation agreement.
6. Approve the appropriate letter.

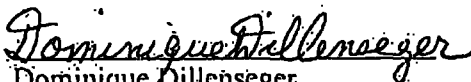
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6.15.16
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